Filed 11/17/09 In re L.B. CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re L.B., a Person Coming Under the Juvenile Court Law.	B213861 (Los Angeles County Super. Ct. No. CK73776)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. H.R., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County, Stanley Genser, Juvenile Court Referee. Affirmed.

Karin S. Collins, under appointment by the Court of Appeal, for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, and Judith A. Luby, Deputy County Counsel, for Plaintiff and Respondent.

H.R. (mother) appeals from the juvenile court's jurisdictional order sustaining a Welfare and Institutions Code section 300 petition.[1] She also appeals from the juvenile court's dispositional order removing her daughter, L.B., from her custody. We reject her challenges to the sufficiency of the evidence and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On July 28, 2008, the Department of Children and Family Services (DCFS) filed a one-count petition alleging: mother "has mental and emotional problems including delusions and auditory hallucinations, which render the mother unable to provide regular care of the child. Such mental and emotional condition on the part of the mother endangers the child's physical and emotional health and safety and places the child at risk of physical and emotional harm and damage." At the time of the petition, L.B. was 14 years old.

DCFS's detention report indicated that the social worker needed police assistance to enter mother's home. Before police arrived, mother told the social worker she was a "child of God" and a "messenger," and that "everyone [was] out to get her." An officer found no food in the refrigerator and no beds in the house. DCFS reported that there was no hot water. According to DCFS, L.B.'s stepmother (stepmother) claimed mother had discarded the furniture because she thought someone had placed recording devices in it to listen to her conversations. L.B. reported that her mother had not been disciplining her, as mother was "too

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[1] Statutory citations are to the Welfare and Institutions Code.

involved with her hallucinations like the walls are tap[p]ed (recording mother)." According to L.B., mother was "acting really weird." Stepmother reported that mother had lost a "drastic" amount of weight and had been "acting peculiar."

During a meeting with a social worker, mother stated that she believed someone was following her and had "taped the walls." Mother became irate and continually interrupted, despite L.B.'s attempts to calm her. At one point, mother threw a pair of glasses at the social worker, hitting her in the eye. Mother then "stormed out" of the conference. L.B., who had been trying to calm mother, "let out all her anger and . . . appeared [to be] relieved to let out all her frustrations as she [was] apparently . . . taking care of mother." At one point, L.B. began to cry, saying, "I can't take it" anymore.

On October 20, 2008, DCFS filed a jurisdiction/disposition report. The report indicated that mother denied suffering from mental illness but acknowledged that she was "stressed out." Mother stated that she had food and utilities and that she took care of L.B. Mother thought the phone and couches had recording devices implanted in them. L.B. stated she wanted to be home with mother, and that mother never hurt her.

Stepmother reported that mother had unscrewed the gas pipe from the stove, causing a leak. According to stepmother, both mother and L.B. required hospitalization for carbon monoxide poisoning. Stepmother reported that maternal grandmother indicated mother had been diagnosed with schizophrenia. Stepmother believed mother would not "intentionally hurt" L.B., but that mother was "doing things that will hurt her." Maternal grandmother, however, denied that mother suffered from mental illness and asserted that mother took good care of L.B.

DCFS reported that L.B. "adjusted to mother's behaviors in that she does not see anything wrong with her mother coming to her school hiding behind the

bushes, her mother hearing voices or hallucinating, or her mother thinking the phone and the furniture are bugged. The child does not have psychological problems herself but has become so accustomed to the things her mother does and says she either down plays the situation, covers it up, or just ignores it as another thing her mother does. In spite of this, the child has managed to do very well in school." DCFS believed that L.B. was not safe in mother's home because mother had discarded the furniture and caused carbon monoxide poisoning by removing the pipe to the stove. DCFS reported that mother had discarded the food because she believed it to be poisoned.

On December 2, 2008, DCFS informed the juvenile court that L.B.'s therapist had told the social worker that L.B. was "emotionally traumatized due to her mother's mental illness. She is very guarded and protective of her mother." According to DCFS, the therapist did not believe the child should be returned to mother's care. DCFS also stated that mother was "deteriorating and the extent of her illness [was] not known at this time."

At one court hearing, mother interjected: "Filed in the name of Jesus. No weapon . . . against me shall prosper in Jesus name." Mother testified at the jurisdictional and dispositional hearing. She testified she did not suffer from hallucinations or delusions. Mother claimed she could hear voices on the phone because she had a cordless phone in an apartment building. Mother testified she discarded the sofa because it was old, but L.B. heard mother say that the cushions "have this high technical electronic [output] where people have little things they put stuff in people's home." Characterizing L.B. as a "big old 14-year old," mother testified L.B. was old enough to provide for herself and had been working since she was 11 years old. Mother denied unscrewing the gas pipe from the stove, but acknowledged that she and L.B. had been hospitalized for carbon monoxide poisoning. Mother acknowledged that she was lucky to be alive. Mother testified

that she was living with a friend, but acknowledged that she was not sure whether, if L.B. were released to her care, the child would be allowed into the friend's home.

L.B.'s attorney stated that while L.B. wished to return to mother as soon as possible, there was sufficient evidence to sustain the petition. Counsel argued that it was not in L.B.'s interest to return her to mother's care. Mother's counsel argued that there was insufficient evidence of jurisdiction and stated that mother was requesting L.B.'s release to her care.

The juvenile court sustained the petition, concluding that L.B.'s statements, the stepmother's statements, and L.B's therapist's assessment supported jurisdiction. The juvenile court further found there would be a substantial danger to L.B's physical health or emotional wellbeing if she were returned to her mother's care. Mother timely appealed.

DISCUSSION

Mother challenges the juvenile court's jurisdictional and dispositional findings. Mother also argues the timing of the section 366.22 hearing was improper.

1. *Jurisdiction*

Mother argues the record lacks substantial evidence that L.B. was in danger as a result of mother's mental status. Under section 300, subdivision (b), a child may be adjudged a dependent of the juvenile court when the "child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, . . . by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse. . . ." (§ 300, subd. (b).) "Before courts and agencies can exert jurisdiction under section 300, subdivision (b), there must be evidence indicating

that the child is exposed to a substantial risk of serious physical harm or illness." (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 823, italics omitted.)

To determine if there is substantial evidence to support the jurisdictional order, we review the record in the light most favorable to the juvenile court's order. (*In re Tania S.* (1992) 5 Cal.App.4th 728, 732.) Conflicts in the evidence are resolved in favor of the prevailing party. (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 564.) "'The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record.' [Citation.]" (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1394, italics omitted.) If the evidence is sufficient, the judgment must be affirmed. (*In re Rocco M., supra,* 1 Cal.App.4th at p. 820.)

The juvenile court's order was supported by substantial evidence. There was evidence that mother suffered from mental illness. She thought recording devices were planted in her furniture and believed the walls listened to her. L.B. reported that mother was not involved in caring for her as a parent because mother was too involved with her own hallucinations. Significantly, L.B.'s therapist reported that L.B had been traumatized by mother's mental illness. While mother denied suffering from mental illness and gave alternative explanations for her behavior, the trial court was not required to credit her testimony. (*In re Albert T.* (2006) 144 Cal.App.4th 207, 216 [under substantial evidence standard of review appellate court defers to juvenile court on issues of credibility of the evidence and witnesses]; *In re Ricardo L.* (2003) 109 Cal.App.4th 552, 564 [issues of fact are for the trier of fact to determine].)

There was further evidence that mother's mental illness affected her ability to provide for L.B. There was no food in the refrigerator, no hot water, and no furniture. There was evidence mother discarded the furniture because she believed it had recording devices and discarded the food because she believed it was

poisoned. Moreover, mother's testimony that L.B. had worked since she was 11 years old and could take care of herself supports the inference that mother expected L.B. to take responsibility for raising herself.

Mother is correct that "[h]arm to the child cannot be presumed from the mere fact of mental illness of the parent[,] and it is fallacious to assume the children will somehow be 'infected' by the parent." (*In re Jamie M.* (1982) 134 Cal.App.3d 530, 540.) Here, however, there was evidence of serious physical harm. Evidence that both mother and L.B. were hospitalized for carbon monoxide poisoning supports the trial court's conclusion that L.B. was exposed to a substantial risk of harm. That mother discounted this incident raised further concerns about her ability to keep L.B. safe. The trial court was entitled to credit stepmother's statements, despite mother's claim that she was not at fault. (*In re Albert T.*, *supra*, 144 Cal.App.4th at p. 216.)

Mother's reliance on *In re Rocco M.*, *supra*, 1 Cal.App.4th at page 825, is misplaced. There, the appellate court questioned whether one instance of physical abuse by a caretaker, a general failure to supervise, and neglect of a child during infancy was sufficient to sustain a petition under section 300, subdivision (b). (*In re Rocco M.*, at p. 825.) The court reasoned that an 11-year-old child was "old enough to avoid the kinds of physical dangers which make infancy an inherently hazardous period of life." (*Ibid*.) The court went on, however, to find a substantial risk of physical harm arose when the mother left drugs easily accessible to the child while the mother was absent. (*Id*. at p. 826.) Like the child in *In re Rocco M.*, L.B. was not an infant at the time the court sustained the petition. Nevertheless, there was ample evidence of a substantial risk of physical harm to L.B. resulting from mother's failure to recognize -- and thus to carry out -- her responsibilities as a parent. Moreover, unlike the child in *In re Rocco M.*, L.B. had already been exposed to one life-threatening incident.

2. *Disposition*

Before the court may order a minor physically removed from his or her parent, it must find, by clear and convincing evidence, that the minor would be at substantial risk of harm if returned home, and that there are no reasonable means by which the minor can be protected without removal. (§ 361, subd. (c)(1).) Mother argues there was insufficient evidence of a substantial danger to L.B. if she were returned to mother's care.

We review the juvenile court's dispositional order for substantial evidence. (*In re H.E.* (2008) 169 Cal.App.4th 710, 724.) "Viewing the evidence in the light most favorable to the finding, and presuming in its support the existence of every fact the trier could reasonably deduce, we ask whether any rational trier of fact could have made the finding by the requisite standard. [Citation.] Mere support for a contrary conclusion is not enough to defeat the finding . . . ." (*Ibid*.)

The juvenile court's order was supported by substantial evidence. Mother did not appreciate the effects of her conduct on L.B., and there was no indication at the time of the dispositional hearing that L.B. could be protected without removal from mother's care. L.B.'s therapist's report supported this finding, as she indicated that L.B. had been traumatized by mother's mental illness. Mother discounts the therapist's statement because it assumes mother had a mental illness, which mother denied. However, as we discussed, there was sufficient evidence to support that finding, and there was no evidence that at the time of the dispositional hearing mother had addressed her mental health issues in a meaningful way.

3. *Timing of Section 366.21 Hearing*

Mother argues the juvenile court erred when it ordered fewer than four months of reunification services prior to the section 366.21, subdivision (e) hearing, a status review hearing. Mother argues the hearing should have been set

for six months from the time L.B. entered foster care. As we explain, the issue is moot.

An appeal is moot when, through no fault of the respondent, an event renders it impossible for the appellate court to grant effective appellate relief. (*In re Jessica K.* (2000) 79 Cal.App.4th 1313, 1315-1316.) The section 366.21 hearing has already occurred. Therefore, this court cannot render the relief mother seeks -- a postponement of the date of the section 366.21 hearing. An appellate court generally decides only actual controversies; "'a justiciable controversy cannot be maintained on appeal if the questions raised therein have become moot by subsequent acts or events.'" (*In re Christina A.* (2001) 91 Cal.App.4th 1153, 1158.) Accordingly, we need not consider mother's contention regarding the timing of the section 366.21 hearing.[2]

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[2] The exception for considering a case that is technically moot where the issues are likely to recur and evade review is not present here (and mother does not contend otherwise). (*In re Christina A.*, *supra*, 91 Cal.App.4th at p. 1158 [where "'a pending case poses an issue of broad public interest that is likely to recur, the court may exercise an inherent discretion to resolve that issue even though an event occurring during its pendency would normally render the matter moot'"].) As mother points out, prior to January 1, 2009, there was a lack of consistency between sections 361.5 and 366.21 regarding the timing for a section 366.21. (*In re Christina A.*, at p. 1161.) The *Christina A.* court held that the inconsistency between the statutes provided an exception to the general rule that an appellate court consider only actual controversies. Because the Legislature amended section 361.5, the same questions are unlikely to recur.

DISPOSITION

The jurisdictional and dispositional orders are affirmed.

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MANELLA, J.

We concur:

WILLHITE, Acting P. J.

SUZUKAWA, J.